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THE  
OFFICE OF MAYOR  
IN THE  
UNITED STATES.

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A STUDY IN ADMINISTRATIVE LAW.

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BY  
GEORGE J. BAYLES, A. M., LL. B.

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*Submitted in partial fulfillment of the Requirements for the  
Degree of Doctor of Philosophy in the University  
Faculty of Political Science, Columbia  
College, in the City of New York.*

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# THE OFFICE OF THE MAYOR

## IN THE UNITED STATES.

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### CHAPTER I.

#### *Introduction.*

From the statistics of the federal census I gather the following facts :

At the beginning of this century only six cities of the United States had populations exceeding 8,000. The largest city had not 75,000 inhabitants.

In 1850 the number of cities with more than 8,000 inhabitants had increased to 141, in 1860 to 286 and in 1890 to 437.

In the year 1800 only 4 per cent. of the population of the United States resided in cities with 8,000 or more inhabitants. In 1860 16 per cent. lived in cities of this size; in 1870 20 per cent., and in 1880 22½ per cent.

During the last fourteen years the increase in urban population has been marked, and now not far from 25 per cent. of the people of the United States reside in cities.

Everywhere it is acknowledged that the development of municipal administration has not kept pace with the increase of urban population. City government has been the weak point in our political organization.

The people of this country thus far in their history as a nation have neglected their municipal affairs because of their intense interest in the development of their com-

mercial resources, and the absorbing attention demanded by grave questions of national politics.

But outrageous abuses of power by municipal authorities have at last drawn the attention of all citizens to matters nearest home, and the study of municipal organization and administration has become popular.

The organic laws of our municipalities as a rule appear to be satisfactory and the law made by municipal legislatures though often originating in corrupt sources has never been so bad as to arouse the people as a whole for reform.

It has been the execution, or, more accurately, the non-execution of the law by vicious and incompetent men that has caused the scandal, and now when the spirit of reform is moving over the land it is the executive departments of city governments that are undergoing closest examination.

At the head of the administration in every city of the country is an officer, "an executive magistrate," usually styled the Mayor, who, in theory at least, is responsible for the execution of law and the maintenance of order within the municipality.

A brief study, therefore, of the powers and duties pertaining to the office of Mayor is opportune.

In order to study with appreciation the present constitution of the office and the power and duties now belonging to it, it is necessary to understand what the office has been in this country.

The first American city governments were established by special charters incorporating the political inhabitants of New York, Philadelphia and New Orleans.

Each of these charters provided for an executive officer styled the Mayor.

For the city of New York a Mayor was appointed by the Governor of the province, in Philadelphia the Mayor was selected from the Aldermen, by the Aldermen and Councilmen, and accepted by the Governor and for the

city of New Orleans a Mayor was appointed by the Governor of the territory.

During the first half of this century and while the number of city governments was rapidly increasing, there developed a widespread democratic movement in administration so that Mayors came to be elected by city councils and later by the whole body of resident electors.

Under the early charters the Mayor was an integral part of the Common Council and a judicial officer with little executive power.

The tendency of legislation affecting the office has been to enlarge its executive powers and in the larger cities to relieve the Mayor of the exercise of his judicial functions.

The detailed enumeration of the powers of the Mayor as found in the municipal codes of the Western States has been the work of the last twenty years.

In order to review more in detail the history of the office in the three oldest sections of the country we may look at the changes as seen in the cities of New York, Boston and New Orleans.

The first charter of the city of New York that is of interest in connection with the subject under consideration was granted by King James II, in the year 1686, and is known as the "Dongan Charter."

This charter appears to be quite singular in its liberality when it is remembered that at that time under the despotic rule of King James there was a general attack by the crown on charter rights both in the three kingdoms and in the colonies. While Governor Dongan was granting liberal charters to the cities of New York and Albany plans were being carried out for the revocation of several provincial charters in New England.

This partiality may have been due in part to the personal character and influence of the Governor, and in part to the favor of the King toward the cities of a province of which as the Duke of York he had been proprietor.

The "Dongan Charter" provided that the Governor of the Province with the advice of the council should appoint annually on the feast day of St. Michael the Archangel, the Mayor, Sheriff and Coroner of the city of New York.<sup>1</sup>

This mode of appointment was continued until the war of the Revolution when by the constitution of the year 1777 the power of appointing the officers mentioned was vested in the Governor of the State and a Council of Appointment and was to remain there until otherwise located by the legislature.

The legislature acting under the constitution of 1777 never removed the power of appointment from the Governor and Council.

The constitution of the year 1821 provided that the Mayor be appointed annually by the Common Council, and that the Sheriff, Coroner, Register and Clerk be chosen every third year by the electors of the city.

The Common Council continued to elect the Mayor until the year 1834 when a law was enacted providing for the annual election of a Mayor by the whole body of electors.

According to the earliest charter the duties of the Mayor were very largely judicial in character.

He was empowered together with any two Aldermen to hold a court of General Sessions of the peace to determine and punish misdemeanors and offenses under the degree of grand larceny. He might also, with two Aldermen hold courts of Common Pleas once a week throughout the year for the trial of personal and mixed actions.

The Mayor was allowed to exercise his discretion in granting licenses to tavern keepers and to others for the sale at retail of all sorts of exciseable liquors.

The charter granted to the city by Governor Cornbury in the year 1708 had for its special object the confir-

<sup>1</sup> § 8

mation of certain vested property rights held by the corporation and did not alter the constitution or powers of the executive department of the city government.

The city received another charter in 1730, an elaborate instrument repeating most of the provisions of the earlier charters, and which remained the organic law of the corporation for about one hundred years.

This charter declared the Mayor to be an integral part of the Common Council but gave him as a separate officer little executive power and a very limited power of appointment.

His judicial duties were continued unchanged except that his criminal jurisdiction was defined more in detail.

The Mayor was made for the time being clerk of the public Market and also Water Bailiff, the duties of the last named officer corresponding roughly with those attached to the modern office of Warden of the Port. Alone he appointed only marshals, porters, carriers, packers, cullers, common criers and scavengers.

The Mayor's power of licensing continued as under the earlier charters. The Mayor and three Aldermen were authorized to hold courts of General Sessions of the Peace and the Mayor and Aldermen so acting were declared to be Justices of the Court of Oyer and Terminer and for goal delivery.

On the 23d day of June 1829, a convention of seventy delegates, five from each of the fourteen wards of the city met in the Supreme Court room in the City Hall for the purpose of revising the city charter. A charter, largely the result of the work of this convention went in effect in 1830.

For the first time it became the express duty of the Mayor to communicate to the Common Council at least once every year a general statement of the condition of the city and to recommend measures relating to the safety health, cleanliness and beauty of the city.

He was also given power to approve or reject every ordinance and resolution which had passed the two boards

of the Common Council and his veto was not subject to a subsequent vote of the Council.

The Mayor continued to be a Justice of the Courts of General and Special Sessions of the Peace, Common Pleas and Oyer and Terminer, and seems to have had at this time an extensive penal jurisdiction. He committed vagrants, heard complaints of cruelty and abandonment of children, cases of profane swearing and of disorder at religious meetings, punished for violations of a rigid act for the observances of Sunday and was authorized to act in concert with the Overseers of the Poor in binding out the children of poor parents as clerks, apprentices and servants, and he might in some cases alone, and in others in association with the Recorder and one Alderman, hear complaints and afford relief in cases of difficulty arising out of the relation of master and apprentice or servant.

It does not appear to have been the usual practice of the Mayor to attend the sessions of the higher courts although he often filled a temporary vacancy on the bench.

The Mayor's executive duties were defined more in detail and the customary phrase appears that "he was to be diligent in causing the laws and ordinances of the city to be enforced."

The Mayor, Alderman and assistant Alderman acted as excise commissioners for each ward, and the Mayor appointed and licensed without confirmation by the council marshals not to exceed one hundred in number.

He was authorized to call upon any reputable physician of the city and require his opinion in writing as to the existence of any infectious or contagious disease within the city limits and if he considered the opinion to warrant it, he might, when requested, deliver certificates of health to the masters of vessels leaving port. He might also in times of pestilence or of other public calamity change the place of meeting of the courts of Justice

from the City Hall to some other place within the city.

The Mayor was the President of the Board of Health.

It was his duty to be present at all dangerous fires and at such times to personally direct the action of constables and marshals and to order the damages sustained by the owners of buildings torn down to prevent the spread of fire to be assessed by a jury in his court. He was to license annually every theatre and circus and to receive and pay over the fees to the Treasurer of the Society for the Reformation of Juvenile Delinquents.

The town of Boston was made a city by a special act of the General Court, approved February 22, 1822. By this first charter the powers of municipal government were vested in a Mayor, a board of six Aldermen, with the Mayor as President ex-officio and a council of forty-eight members chosen in twelve wards.

Bost.

The Mayor was declared to be the chief executive officer of the new Corporation, but had no power to act independently of the Aldermen. When appointments to office were made by "the Mayor and Aldermen" he exercised an exclusive power of nomination, and had a right to a vote on all questions but no veto power.<sup>1</sup>

No changes of importance affecting the powers of the Mayor were made between the years 1822 and 1854 when a complete revision of the first charter was adopted by the General Court and accepted by the city. The need of increasing the power of the chief executive had long been felt and with that end in view the Mayor was given a qualified right to veto all the acts of the city council, and all acts of either branch involving an expenditure of money.

The Mayor was authorized to preside at meetings of the Aldermen but had no vote, yet as chairman and a member of the board the Mayor was in a position to exert an important influence in the management of the city affairs.

<sup>1</sup> Johns Hopkins University Series, 1887; page 22.

Practically the power of the Mayor was lessened, instead of being enlarged, although that was not the purpose of those who framed the charter.

For many years he appointed Aldermanic committees and acted as chairman of the Police Committee, but he so acted by courtesy and naturally with a view of carrying out the wishes of those holding the real power.

Since 1854 there have been many changes in the laws relating to the government of the city of Boston but there has been no complete revision of the charter.

Between the years 1865 and 1875 the population of Boston was greatly increased, partly by the annexation of two cities and three towns with an aggregate population of about 86,000.

The increase in the volume of municipal business in consequence of the increased population and in the quantity of taxable property strained the city government in several places and it became evident that many changes were necessary.

In 1873, a commission was appointed "to revise the charter and other laws relating to the city, and to report the same in a new draft." This famous commission consisted of Benjamin R. Curtis, formerly a Justice of the United States Supreme Court, George T. Bigelow, formerly Chief Justice of the Supreme Court of Massachusetts, Otis Norcross, an ex-Mayor, Samuel T. Shaw, son of the late Chief Justice who drafted the original charter and Arthur W. Austin, an ex-collector of the port.

The draft submitted in 1875 provided for an extension of the terms of the Mayor and members of the council to three years, gave the city council entire control over all appropriations of public money and the selection of the objects for which it was to be expended.

The heads of the various executive departments were to be appointed by the Mayor and confirmed by the concurrent vote of the two branches of the city council.

This report of the commission was fully discussed

both by the council and the press, criticised as being too elaborate, covering too many of the details of administration, and was smothered in committee and the organization of 1854 continued for ten years longer.

In 1884 another commission was appointed, consisting of the chairman of the board of aldermen, the president of the common council and three citizens selected by the Mayor. The following suggestions were made: To relieve the council of executive duty, to create an executive council of five to act upon the Mayor's appointments, to extend the terms of the Mayor and members of the executive and city councils to two years, to give the Mayor the initiative in the appointment of executive officers, the power to veto distinct items or subjects in any ordinance or order, the duty of calling together once a month, or oftener, the heads of departments for consultation and advice upon the affairs of the city, and the duty, together with the executive council, of revising the annual estimates of the executive departments before being submitted to the city council.

*Br*

The debate in the council upon the reception of this report showed that no adequate reform could be expected from that body.

A citizens' association was formed which proposed a plan and made direct application for relief to the General Court. The bill, as finally presented by the association included the most important recommendations made by the commission, and became law without material alteration.

New Orleans had been created a municipality by authority of the French Consulate prior to the cession of the territory of Louisiana to the United States in 1803, but received its first organization of an American type by an act of the territorial legislature in 1805.<sup>1</sup>

The municipal officers under this charter were a Mayor, a Recorder, a Treasurer, fourteen Aldermen

<sup>1</sup> 3 La. Ann. 305.

chosen in seven wards, and a number of subordinate officers.

The Mayor and Recorder were until 1812 appointed by the Governor of the territory but since that date they have been elected by the political inhabitants of the city.

The Mayor was ex-officio the presiding officer of the board of Aldermen and in the city government was merely the chief administrative agent of the board.

By another charter granted in 1836 the territory of New Orleans was divided among three separate municipalities, each having a distinct government with many independent powers, yet over all a Mayor and general council with a certain superior authority.

After the capture of the city by the Federal forces in May 1862 the administration of city affairs became the subject of military action, and perhaps for the only time in the history of the United States a military Mayor was appointed. The resident authorities confessed to have received a valuable object lesson from the promptness and efficiency of this military Mayor and his subordinate in matters of police and sanitation.

In 1870 an experiment in municipal government was tried.

A charter was granted establishing what was known as the "administrative system." The limits of the city were considerably enlarged by the annexation of Jefferson City and the government of the municipality thus created was vested in a Mayor and seven "administratives."

The Mayor and these seven heads of departments formed a council over which the Mayor presided. This council exercised extensive legislative powers for local purposes quite closely resembling the Cabildo of the early Spanish city.

The latest charter granted in 1882 has modified the city government to resemble those of northern cities.

## CHAPTER II.

### PRESENT CONSTITUTION OF THE OFFICE.

By the constitution of the office is meant those elements which may be considered apart from the action of the incumbent, such as: legal qualifications, election, term, oath, motion, election to fill vacancy and compensation.

These elements are almost all provisions of statute law and are found in great variety in the different commonwealths owing to the unequal development of the art of municipal administration.

#### *1. Legal Qualifications.*

In the absence of express prohibition special conditions of eligibility to hold municipal office have been repeatedly declared constitutional, and are found today in the statutes of a majority of the States.

The more common qualifications to hold the office of Mayor relate to residence, citizenship, age and property, and are found in about this order of frequency. Some period of residence within the municipality is almost invariably required in express terms, but there is a great variety of these periods. The very common condition of simple electorship means generally a residence of thirty or sixty days prior to election.

As examples of longer periods we find six months required in Savannah, Georgia,<sup>1</sup> one year by a general

<sup>1</sup> Code Appendix, Art. 1.

law in Texas,<sup>1</sup> two years in Mississippi, within the county,<sup>2</sup> three years, by a recent law in Louisville, Ky.<sup>3</sup> and five years in Brooklyn,<sup>4</sup> Philadelphia,<sup>5</sup> Baltimore<sup>6</sup> and New Orleans.<sup>7</sup>

Non-residents have been considered eligible to hold the office of Mayor, where no express provision of constitution or statute forbids,<sup>8</sup> and though such a rule seems inconsistent with the prevailing doctrine of local self government, yet experience has shown that it might be made statute law and in many cities result in improved administration.

A recent writer on city government suggests residence within the State rather than within the municipality as a qualification, so that men of proved ability might be called to service by any city in their State.<sup>9</sup>

If the voters of our larger cities would in practice take advantage of such a privilege and elect to the office of Mayor, men who had shown marked executive ability in the smaller cities such freedom of choice would of course be most desirable.

Citizenship in the United States for a term of years as a condition is becoming more common and now ten years are required in Baltimore and New Orleans. Twenty-five years of age are required in Brooklyn, Philadelphia and Baltimore and thirty years in St. Louis, Louisville and New Orleans.

Property qualifications are very rare and when found, as in the charter of Baltimore, demand the ownership in fee simple of real estate of the value of \$500 located within the city.

It is hard to see the value of such a requirement for in practice it need never disqualify a candidate.

In addition to these positive qualifications there are

<sup>1</sup> Civil Statutes, Vol. 1, Title 17.    <sup>2</sup> Code 1892, ch. 93.    <sup>3</sup> Laws of 1892  
<sup>4</sup> Laws of 1888, ch. 583.    <sup>5</sup> Digest, page 53.    <sup>6</sup> Public Local Laws, Art. 4, § 7.  
<sup>7</sup> Acts 1892, page 22.    <sup>8</sup> Commw. v Jones, 12 Pa. St. 365.    <sup>9</sup> Conkling's City Government in the United States.

found certain negative conditions of eligibility expressed either as statute law or judicial construction.

The charters of Minneapolis, Detroit, Louisville and some other larger cities forbid one to hold the office who has a financial interest either as principal or surety in any contract to which the corporation is a party.

Certain offices have been held incompatible with that of Mayor, such as town Clerk,<sup>1</sup> and under the constitution of Indiana a Mayor, being a judicial officer cannot hold the office of a director of a State prison.<sup>2</sup> Under the charter of the city of Austin, Texas, providing that no one be elected Mayor, who held a lucrative office under the authority of the United States, it was held that a retired army officer with half pay and subject to a call for active service was disqualified.<sup>3</sup>

## 2 Election.

At the present time the rule is almost universal throughout the United States, that Mayors are elected by the votes of the whole body of qualified electors resident within the municipality.

Interesting exceptions however are found in the State of Tennessee, where under a general statute the Aldermen immediately after election organize as a board and elect one of their number to preside as Mayor for the current year, and until his successor is elected and qualified.<sup>4</sup>

The use of this method in Tennessee long after the other States have adopted popular election, can be explained only by the rudimentary condition of the office and the generally simple municipal organization.

A Mayor in Tennessee is simply the presiding Alderman without additional executive or judicial powers.

The charter of Providence, Rhode Island, has an unusual provision requiring a majority of all the votes cast for an election and frequently causing a second balloting.

<sup>1</sup>Com. Dig. Tit. Officer B. C.   <sup>2</sup>Howard v Shoemaker, 35 Ind 111.   <sup>3</sup>State v DeGrees, 53 Texas, 387.   <sup>4</sup>Code 1884, Title IX, Art. VI.

This provision seems to have favored triangular contests for the office and deals during supplemental campaigns between candidates polling the most and fewest votes.

In case two or more candidates should receive an equal number of votes there are in force two plans for having an election.

One method found in Minnesota,<sup>1</sup> West Virginia<sup>2</sup> and North Carolina,<sup>3</sup> is to have the election determined by lot in the presence of the city council.

This is a rapid but most unworthy way of settling a serious matter.

Chance is allowed to do what should be the thoughtful work of all the citizens.

It has been held in Wisconsin where this method is employed, in a case where there was a tie between the incumbent and another candidate, and the city council failed to choose by lot as required by the charter, that a court of equity would not interfere to restrain the incumbent from exercising the powers of the office.

The more honest way is that found in the charters of Philadelphia<sup>4</sup> and Louisville<sup>5</sup> where an election is effected by the votes of the majority of the members of the city council.

No peculiar provisions are found for settling contested elections to the office of Mayor.

It is frequently provided both by special charters and general incorporating acts that the Common Council or other governing body of the corporation, "shall be the judge of the election and qualifications of its own members and of those of the other officers of the corporation."

Such a provision does not seem of itself to oust the ordinary jurisdiction of the Superior Courts, the rule as stated by Judge Dillon being, that the jurisdiction of the court remains unless it appears with unequivocal certainty that the legislature intended to take it away.<sup>6</sup>

<sup>1</sup> Laws 1870, page 21.    <sup>2</sup> Acts 1882, ch. 47.    <sup>3</sup> Code 1883, § 3794.

<sup>4</sup> City Digest, page 52.    <sup>5</sup> Law of 1892.    <sup>6</sup> Municipal corporations, 4th Ed page 284.

In Connecticut a claimant to the office of Mayor can within sixty days after election file a petition with a Judge of the Supreme Court whose decision will be final except on questions of law which may be reserved by the judge, with the consent of all parties, for the advice of the Supreme Court of Errors.<sup>1</sup>

When the charter of a city provides that the Mayor, Recorder and Aldermen, when assembled constitute the common council and further provides that the common council shall be the judge of the election and qualification of its members, this power extends to the election and qualification of the Mayor and is exclusive so that the court will not grant an information in the nature of quo warranto after the council has taken action.<sup>2</sup>

Where, however, the phrase "Own members" was found in a charter it was held that the common council was not the judge of the election of Mayor, he not being one of their "own" members within the spirit and intent of the charter.<sup>3</sup>

Although a city council is by charter the proper tribunal to judge of an election, if no ordinance has ever been adopted defining the method by which an election should be contested, a claimant is not excluded from having his right determined by an information provided by a general statute.<sup>4</sup>

But it has also been held that if a council has the power, it may exercise it after an election and draft a procedure for the contest.

### 3. *Term of Office.*

There are few elements of the constitution of the office of Mayor which at the present time are seen in so great a variety as the length of the term.

Different terms are found often in the same State and equal terms in municipalities which vary greatly in size.

<sup>1</sup> Laws 1884, ch. 79.    <sup>2</sup> *Defoe v Harshaw*, 60 Mich. 200

<sup>3</sup> *State v Funck*, 17 Iowa, 365.    <sup>4</sup> *Garside v City of Cohoes*, 58 Hun. 605.

Speaking broadly, however, the rule appears to be that the length of term increases with the populousness of the city, but there are striking exceptions such as Boston with a population of more than 450,000 and a term of one year, and Indianapolis with a population of about 110,000 and a term of four years.

Throughout the New England States the rule of short terms of office seen so uniformly in the Commonwealth governments is carried down into the city governments, and a one year term of office for the Mayor is universal.

One year is a very short period of time for a man to show his powers in a government like that of Boston, and it is perhaps a recognition of this fact that has developed the custom of tendering a second nomination, almost as a matter of course.

There is one advantage in a short term that should not be overlooked.

Men who have shown unusual capacity in the management of large private interests may be often induced to shoulder this burden and take office for one or possibly two years, who would refuse to surrender lucrative private positions or undertake a double service for such a term as four years.

Among the larger cities the Mayors of New York, Brooklyn, Baltimore, Chicago, Omaha and San Francisco hold office for two years, while those of Philadelphia, Indianapolis, St. Louis, Louisville and New Orleans serve for the long term of four years.

Throughout the country the most common term for Mayors of cities of all classes is that of two years.

It has become the rule in the United States that municipal officers, particularly those of a high grade as the Mayor, elected for a fixed and definite term, in the absence of express constitutional or statutory prohibition, continue in office until a successor is legally chosen and qualified.<sup>1</sup>

<sup>1</sup> *Chandler v Bradish*, 23 Vt. 410.    *People v Fairbury*, 51 Ill. 149.

But it is a recognized incident of the continuing control of a State legislature over the organization of a municipal corporation which it has created that it has power, in the absence of constitutional restriction, to alter at any time the lengths of the terms of corporate officers.

So where an act amending a city charter provided for the election of a Mayor, two years before the expiration of the term of the Mayor in office, but did not specify the time for the beginning of the new Mayor's term it was held that the new Mayor was entitled to immediate possession of the office.<sup>1</sup>

The unconditional repeal of a municipal charter abolishes the office of Mayor, along with all the other offices of the corporation and the substitution of another charter without any saving clause as to the right of a Mayor under the former charter at once ends the incumbency.<sup>2</sup>

#### *4. Oath of Office.*

Municipal charters usually require in express terms that a Mayor shall take an oath before entering upon the performance of the duties of his office. Such an oath is by no means indispensable and its requisition depends upon usage and positive statutory direction.<sup>3</sup>

A Mayor swears to support the Constitution of the United States and of the State and to enforce the laws of the State and the ordinances of the corporation.

The oath taken by the Mayor of Chicago may be cited as an example.

"I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of Mayor according to the best of my ability."

A curious provision is found in a Texas law of 1875,

<sup>1</sup>Alexander v McKenzie, 2 S. C. 81.    <sup>2</sup>Crook v People, 106 Ill. 237.

<sup>3</sup>Johnson v Wilson, 2 N. H. 202.

allowing a city council to provide by ordinance for an oath in addition to the constitutional oath, it would be interesting to know the municipal experience that suggested this precaution.

### 5. *Amotion.*

The power to amove a corporate officer from his office for reasonable and just cause is a common law power possessed by all corporations.<sup>1</sup>

Although this doctrine as originally formulated in England and applied to municipal corporations contemplated the exercise of the power by the whole body of corporators, it has been decided in this country, by the Supreme Court of the State of New York, that such a power may be exercised by the representative and governing body of a municipal corporation as organized in the United States.<sup>2</sup>

Very few either of the general statutes for the government of the cities or the particular charters provide any special procedure for the removal of a Mayor from office.

An act of 1882 provides for the removal of the Mayor of the City of New York by the Governor in the same manner as Sheriffs, except that the Governor may direct that the inquiry by law be conducted by the Attorney General.<sup>3</sup>

The same law gives the Governor power, after charges have been received to suspend the Mayor for a period not exceeding thirty days.

In Illinois if a Mayor is guilty of a "palpable omission of duty or is willfully and corruptly guilty of oppression, misconduct or misfeasance in his duties," he is liable to indictment in any court of competent jurisdiction and on conviction to be fined not over \$1,000 and the Court enters an order of removal.<sup>4</sup>

<sup>1</sup>*Rex v Richardson*, 1 Burr, 517.   <sup>2</sup>*Langdon v City New York*, 27 Hun., 288.   <sup>3</sup>§ 122.   <sup>4</sup>*Laws of 1873*, Art. II, § 14.

In Alabama the constitution provides for the removal of Mayors, and Intendents, of incorporated cities from office for willful neglect of duty, corruption, habitual drunkenness, incompetency, or any other offense involving moral turpitude, by the circuit, city or criminal court of the county.<sup>1</sup>

The Mississippi municipal code of 1892 allows a city council to provide for the removal of all officers.

Where a general incorporation act of Texas authorized the removal of the Mayor among other things for "willful violation of any of the ordinances of such town or city," and provided for a trial before the board of Aldermen who were empowered to enter judgment against him on finding that the charges were "a sufficient cause for a removal from office," it was held that the Aldermen were not invested with unlimited discretion, without regard to whether he was guilty of an offense in law or not; and that a violation of an ordinance which was void as being unreasonable did not furnish proper ground for the removal.<sup>2</sup>

#### 6. *Vacancy—How Filled.*

The office of Mayor may be declared vacant not only on the usual grounds of death, resignation, permanent mental or physical incapacity to perform the duties of the office and removal by judicial decree, but also by acceptance of an incompatible office and removal from the limits of the municipality with the intent to make a change of domicile.

In two of the States, Ohio and California, it is expressly provided by statute that removal beyond the limits of the corporation, in Ohio without intent to return,<sup>3</sup> and in California for thirty days,<sup>4</sup> is to be considered an abandonment of the office.

<sup>1</sup>Art. VII.

<sup>2</sup>Millikin v Weatherford, 54 Texas, 388.

<sup>3</sup>Rev. St. § 1715.

<sup>4</sup>Political code, page 701.

There is no uniform method employed in this country for filling a vacancy in the office, and widely different provisions are found in the same sections of the country, in fact, of no other single element of the constitution of the office, is there to be found such a variety.

In the first place there is the plan in force in the cities of New York, Brooklyn, Baltimore and elsewhere, of having the President of the Board of Aldermen designated by charter as the officer upon whom duties of the Mayor shall devolve.

The President of the Board of Aldermen is sometimes as in the City of New York, elected by the people at large but more often, especially in smaller cities, he is one of the ward Aldermen chosen by the Board as the presiding officer for the year.

When the last mentioned plan prevails there is a greater likelihood when a vacancy exists of there being a change in the political influence of the executive office.

Another plan is by special election by the city council, but this election is held under so many different conditions that general statements would be of little value and a group of cases will give the best general idea.

In Philadelphia if the vacancy occurs during the last year of term the city councils in joint convention elect between ten and twenty days after the event.

If, however, the vacancy occurs during the first three years, there is a general election by the people for the unexpired term. In the State of Ohio a majority of the Board of Aldermen elect, but their choice is not confined to the members of the board, as any suitable person residing within the municipality may be chosen.<sup>1</sup>

In Chicago if the unexpired term is less than one year the city council appoints one of its own members.

This was the method employed to fill the vacancy caused by death of the late Mr. Carter Harrison and as is

<sup>1</sup>Municipal code, § 1715.

almost inevitable in a large legislative body, caused undignified confusion.

A third method of filling the office is by election by the whole body of electors for the unexpired term if that is a very considerable proportion of the whole term.

An unusual discretionary power is vested in the city council of Detroit, which has the right to decide whether if a vacancy has occurred within six months of the time for holding a regular election, it is best to have a special election or to fill the office by appointment.<sup>1</sup>

#### *7. Compensation.*

The movement which has been noticable for some years in American administration for the substitution of fixed salaries for fees as a method of compensation has already in many States been felt in the office of Mayor.

Generally throughout the United States at the present time when Mayors are paid for their services it is by salary, and the fee system prevails, as a rule, only in those sections where the judicial functions of the office are still prominent. This is the case in the Mississippi valley and in some of the southern Atlantic States.

For the smaller cities of many States no compensation whatever is attached to the office.

Here certainly is a weak point in American local administration.

Men of moderate ability strive for the office and bear the necessary expense of official activity yet often make no claim on the corporation and look for compensation only to an increase of influence.

The smaller cities of the country have not as a rule secured the services of their ablest citizens.

Private corporations have been allowed through a love of money to absorb our best executive talent and a vast municipal debt and many scandals have been the result.

<sup>1</sup>Laws and ordinances 1894.

As a rule a city council has power to fix by ordinance the salary of the Mayor with the restrictions that the amount shall not be lessened during a term, and that it shall not exceed a stated sum.

The cities of New York, Brooklyn, Louisville and New Orleans are exceptions to this rule, the salary of the Mayor being fixed by charter at \$10,000, \$6,000, \$5,000 and \$3,500 respectively.

The change from the fee system to fixed salaries has been a change only in the method of compensating the Mayor, and has not done away with the fees collected at the Mayor's office for which an account is rendered to the financial officer of the city.

Where one section of a city ordinance provides that "For every license granted by the Mayor he shall receive the sum of one dollar," and a subsequent section of the same ordinance that, "The salary of the Mayor shall be \$2,000 per annum \* \* \* and he shall not be allowed to receive any perquisites or fees for any service performed, except in such cases as are provided for in the laws of the State, the fees received by the Mayor under the former section of the ordinance are for the benefit of the city and are not to be received by the Mayor in addition to the salary payable to him under the latter section.<sup>1</sup>

#### 8. *The Acting Mayor.*

As a rule throughout the States municipal charters provide that all the powers and all the responsibilities belonging to the office devolve upon the one who assumes the office of Mayor even for a short time.

It is generally the President of the Board of Aldermen or of the common council who is the officer specified to act as Mayor.

An exception is found in the charter of the city of Chicago which provides that in case of the temporary absence or disability of the Mayor the city council is to

<sup>1</sup>Hatch v Cincinnati, 17 Ohio St., 48.

elect "one of its members," not of necessity the president to exercise the powers of the office.<sup>1</sup>

When by the charter there is a curtailing of the powers of the Mayor in the hands of the acting Mayor it lasts but for a few days, so as to preserve the more important opportunities for the exercise of the powers of the office for the Mayor himself if absent or incapacitated for a short time.

So in the city of New York the President of the Board of Aldermen when acting as Mayor cannot appoint to, or remove from office, or approve or disapprove any act or resolution of the Board unless the absence of the Mayor shall have continued for ten days.<sup>2</sup>

In practical administration the more important powers are left unexercised by an acting Mayor, unless an emergency requires immediate action, if there is any prospect of the Mayor resuming the discharge of his duties.

An interesting case dealing with the powers of an acting Mayor was decided in 1890 in New Jersey.

An act passed in 1889 authorized the Mayors of cities to appoint the principal municipal officers, if the act was accepted at popular elections, and further authorized the Mayors by proclamation to call for such elections.

It was decided that in case the Mayor was absent, and the charter in such a contingency vested the powers of the Mayor in a specified officer, that such officer could proclaim an election.<sup>3</sup>

But where power is given a board of Aldermen to appoint one of their number Mayor "for the time being, who shall hold office until the Mayor returns, but shall vote as any Alderman and not have the casting vote or any power of veto," such a provision refers only to the

<sup>1</sup>Laws and ordinances 1890, Art. II, § 4.    <sup>2</sup>Consolidation Act, § 32.    <sup>3</sup>In *Re Cleveland*, 55 N. J. L. 188.

organization of the meetings of the board, and is not intended to authorize the Aldermen to appoint a Mayor to discharge all the duties which are laid by charter upon the officer, so that an Alderman chosen Mayor *pro tempore*, under such a provision could not approve the sureties on a City Chamberlain's bond.<sup>1</sup>

<sup>1</sup>North v Cary, 4 Thomp. & C., 357.



## CHAPTER III.

### THE MAYOR AND COUNCIL.

#### *1. As Member of the Council.*

The relations of the Mayor to the legislative department of a municipal government in the United States are various and confusing, owing to the fact that such relations are governed almost entirely by the statutory enactments of the several States, and that few if any of the old common law rules are applicable.

The doctrine of the English law with reference to the old corporations of that country, that the Mayor was an integral part of the corporation whose presence was necessary for a valid meeting of the corporate council has no application to the office of Mayor in the United States to-day.<sup>1</sup>

Whether a Mayor is a member of the municipal council depends upon the provisions of the statute, he possesses no such membership by virtue of his office.

In most of the States the Mayor is expressly declared to be a member of the council but there are some important exceptions, and some provisions that make his membership different from that of Aldermen or Councilmen.

The Mayor of the City of New York is not a member of the Board of Aldermen, neither are the Mayors of Boston and Brooklyn.

By the municipal code of Ohio in the cities of Cincinnati, Cleveland and Toledo, where the Mayors are not the presiding officers of the council, it is provided that they shall have a seat at all meetings, shall take part in the proceedings on all questions relating to their department,

<sup>1</sup>Dillon, 4th Ed. page 351.

without however, a right to a vote, and they may be compelled to attend the meetings of the council in the same manner as the regular members.<sup>1</sup>

In the Southern States the Mayor is almost always a member of the council. Where by a North Carolina charter it was provided that the Intendent should have a seat in the board of Commissioners and should preside but if he were absent the board could elect a presiding officer pro tempore, the courts held that he was a Commissioner and had the right to participate in municipal legislation.<sup>2</sup>

It has been decided in Iowa that Mayors of cities organized under the general corporation act, are not ex-officio members of the city council nor have they any right to preside over that body or to vote.<sup>3</sup>

When the power to legislate has been conferred on the "Mayor and Councilmen" the phrase has been regarded as recognizing the Mayor as a distinct branch of the municipal legislature, so that the co-ordinate action of both the Mayor and the Council is required to give validity to a by-law or other municipal enactment.

The case which resulted in this last decision arose under an amendment to the charter of the city of St. Joseph, Missouri, by which the Mayor and councilmen of the city had power to provide for the macadamizing of streets, alleys, etc.

The Supreme Court of Missouri decided that the city council had no power to direct work of such a character to be done except when acting in conjunction with the Mayor, and a tax bill based on the action of the council alone, without the co-operation of the Mayor, is invalid.<sup>4</sup>

Although by the charter of the city of Chicago the Council is made to consist of a Mayor and Aldermen, a requirement under a general statute of Illinois for the incorporation of the cities and villages, that the council shall

<sup>1</sup>§ 1682.  
22 Iowa, 75.

<sup>2</sup>Raleigh v Sorrell, 1 Jones, N. C. L. 49.  
<sup>4</sup>Saxton v Beach, 50 Mo. 488.

<sup>3</sup>Cochran v McCleary.

within the first quarter of the fiscal year pass an ordinance to be termed the "Annual appropriation bill," has been held not to mean that there shall be passed a complete ordinance having the sanction both of the city council and Mayor within the time mentioned. The city council and the Mayor were regarded as distinct parts of the legislature distinguished from each other in this respect.<sup>1</sup>

A recognition of this modern character of the Mayor as a co-ordinate branch of the municipal legislature was made in the decision of a case where the question was of validity of a repeal, to the effect that neither the Mayor nor a single branch of a bi-cameral municipal council could effect such a repeal.

Only the complete power that enacts can expressly repeal.<sup>2</sup>

In the States of Tennessee and North Carolina where Mayors have practically no separate executive powers they are little more than members of the city council with the right of presiding.

## 2. *The Mayor's Messages.*

As a rule when a Mayor is anything more than the presiding officer of a city council and exercises any independent executive powers, charters require him to send to the council formal statements as to the condition of the city.

This duty is distinct from that of furnishing the council on demand with information relating to his department. In the larger cities such as New York, Chicago, Philadelphia, Brooklyn and San Francisco an annual message is required and in addition, occasional communications in the discretion of the Mayor.

St. Louis and New Orleans are exceptions among the larger cities in this respect, for in these cities the messages are not periodic and do not, as a matter of course, review the work and condition of the various departments, but the

<sup>1</sup>King v City of Chicago, 111 Ill. 66. <sup>2</sup>City Council v Church, 4 Strobb, 306.

Mayor communicates with the council from time to time reporting official misconduct and forfeitures and penalties for the violation of ordinances.<sup>1</sup>

In San Francisco the Mayor is required to transmit to the council at the beginning of every session a statement of the condition of the departments.<sup>2</sup>

By the municipal code of the State of Ohio if in the opinion of the Mayor an expenditure which is authorized by a council will exceed the revenues of the corporation for the current year, it is his duty to protest against such expenditures and to have his protest with reasons entered on the Journal of the council.<sup>3</sup>

This is an unusual form of communication but one that is more likely to receive attention from the municipal legislature and to be heeded by the people than the conventional recommendations which are referred to and buried by appropriate committees.

### *3. As the Presiding Officer.*

It is very generally today an express duty of the Mayor to preside at meetings of the city council.

The exceptions are found chiefly among the largest cities such as Boston, New York, Brooklyn, Philadelphia, Cincinnati, Deiroit and Omaha, and where the strictly executive powers of the office have been most developed.

The exemption of the Mayor from this tiresome and often uncongenial task of acting as presiding officer will surely develope many advantages.

The executive and legislative departments of municipal government will become more distinct, their influence upon each other will broaden and deepen, and responsibility, that necessary balance wheel for all political machinery, will become more and more a factor to be relied upon.

<sup>1</sup>Rev. St. §1054, Acts 1893, page 28.

<sup>2</sup>Col. Pol. Code, page 702.

<sup>3</sup>§ 1748.

Chicago is the largest city in the United States where the Mayor acts as presiding officer of the city council.<sup>1</sup>

Where as in the city of Providence, Rhode Island, the board of Aldermen resolves itself once a year into a convention for the purpose of filling the minor municipal offices the Mayor presides.

In North Carolina and generally throughout the southern States the Intendent presides at the meetings of the Board of Commissioners.

By a general statute in New Jersey applying to several of the smaller cities of the State, the Mayor is expressly forbidden to preside over the city council and provision is made for the election of an "Alderman at Large" whose special duty is to preside.<sup>2</sup>

But the general character of recent legislation in that State compels the belief that no advance in municipal administration was desired and that the sole purpose of the legislature was to create another political office.

Where a Mayor as a presiding officer of a convention decided that one ballot was illegal, the result of which decision was that no candidate received a majority of the votes, and the convention without objecting to the Mayor's decision, proceeded to a second ballot, at which all the members voted and after which one of the candidates was declared duly elected, the Mayor's decision as to the illegal ballot when thus acquiesced in by the convention was conclusive.<sup>3</sup>

But the mistakes of a Mayor like those of any other presiding officer need work no wrong, and his false rulings do not nulify the action of the corporation having legal expression in a majority vote of its legislature.

When the Mayor is by charter the presiding officer of a municipal council and has at least a casting vote he shares with the other members any personal liability

<sup>1</sup>Laws and Ordinances, Art II, § 6. <sup>2</sup>Pamphlet laws 1886, page 361. <sup>3</sup>Keough v Aldermen Holyoke, 81 N. E. Rep. 387.

which may be imposed by statute on the officers of the corporation for failure to provide certain legislation.

So in Iowa a Mayor was held personally responsible along with the other councilmen for the failure of the council to provide for the levy of a tax for the payment of a judgment against the city.<sup>1</sup>

The right of a Mayor to preside over the meetings of a city council is a franchise and may be tested by an information in the nature of quo warranto.<sup>2</sup>

#### *4. Power to Call Special Meetings.*

The greater number of city charters confer upon the Mayor the power to call special meetings of the city council.

The Mayor usually exercises this power exclusively, but by some charters, for example those of Omaha and New Orleans, he must be joined in his notice by at least five members of the council.<sup>3</sup>

In a proceeding to oust a sinking fund commissioner of the city of Louisville there was evidence that the board of councilmen met on October 24th, and passed a resolution for a joint session to elect a sinking fund commissioner, but this resolution was rejected by the board of Aldermen which board also rejected another resolution of the councilmen for an adjournment to October 28th, when a joint meeting was to be held. On the same evening the Mayor adjourned the board of Aldermen until November 7th.

The courts held the adjournment to be a nullity under the charter providing that "neither board shall adjourn without the concurrence of the other for a longer term than twenty-four hours, and if they cannot agree on an adjournment the Mayor shall then adjourn them to a day not beyond the regular time of meeting," and that both

<sup>1</sup>Porter v Thompson, 22 Iowa, 391.   <sup>2</sup>Dillon 4th Ed, page 352. Cochran v McCleary, 22 Iowa, 75.   <sup>3</sup>Compiled statutes, page 149. Acts 1883 page 23.

boards were left in session with the right to meet the next day.<sup>1</sup>

The provision of a city charter empowering the Mayor to call special meetings of the council by causing notice to be left at the usual residence of each member of the council does not exclude personal notice to the members.<sup>2</sup>

#### 5. *Right to Vote.*

Contrary to the rule of the common law that the Mayor has no casting vote except as given by charter or founded on long established custom,<sup>3</sup> statutes at the present time in this country allow a Mayor, like the presiding officer of any other legislative body to vote in case of an equal division of the council.

In the city of Providence, Rhode Island, while the Mayor has no vote in the board of Aldermen he has a casting vote in the annual convention of the board of Alderman and the common council for the election of the minor city officers.

The contrary rule prevails in Texas where a Mayor has a casting vote in all cases except in cases of election to office.<sup>4</sup> The Mayor of a city of the second class in Kansas is authorized to give a casting vote on a motion to confirm his nomination when the council is equally divided on the question.<sup>5</sup>

Recent decisions have been very favorable to the right of a Mayor to vote. An interesting case was decided in Illinois where a charter gave the Mayor a vote in case of a tie and when on a question of appointment to office four of the eight councilmen voted and four refused to vote, the Mayor considered each refusal as a negative vote, and voted with the four as the court said lawfully.<sup>6</sup>

Where a city charter provides that the Mayor shall have a vote when there is a tie in the vote of the council-

<sup>1</sup>Tillman v Otter, 30 S. W. Rep. 1086. <sup>2</sup>Russell v Wellington, 81 N. E. Rep. 630. <sup>3</sup>Anon Loft, page 315. <sup>4</sup>Laws 1875. <sup>5</sup>Carroll v Wall, 35 Kan. 36. <sup>6</sup>Erie R. v Dunkirk, 65 Hun. 494.

men the casting of his vote in such a case makes a majority vote in the council on all motions.<sup>1</sup>

The charter of the city of Bridgeport, Conn., provided that the Mayor, Board of Aldermen and Board of Councilmen should constitute the common council and that the Mayor should preside at the meeting of the board of Aldermen, and have a casting vote only in case of a tie. It was held that in case of a tie vote in the board of Aldermen on the question of considering a nomination made by the Mayor, or on the confirmation of a nomination made by him of a commissioner of police, the Mayor could give the casting vote.<sup>2</sup>

Under a statute empowering the Mayor of a city to determine and declare which of two or more candidates, who have received half of the ballots cast at an election by the city council, is elected, it is sufficient for the Mayor to declare one of the candidates elected, without himself finally casting a ballot.<sup>3</sup>

#### *6. Power of Approval.*

Perhaps the most common duty belonging to the office of Mayor is that of passing upon the enactments of the municipal legislature.

This duty is almost universal, the only exceptions being found in those States where the Mayor is practically nothing more than the presiding officer of the city council.

Some variety however is found in the extent to which the approval of the Mayor is necessary for valid legislation.

The broadest language is found in the charters of the cities of Boston and Providence where "every enactment of each branch of the council" is submitted to the Mayor.

The usual phrase is "every ordinance and resolution" or "joint resolution."

<sup>1</sup>Launtz v People, 118 Ill. 137.  
<sup>2</sup>Orne, 99 Me. 78.

<sup>3</sup>State v Pinkerton, 68 Conn. 110.

<sup>4</sup>Small v

Such provisions of a statute generally include resolutions appointing to municipal office, but the phrase, "every ordinance and resolution affecting the interests of the city" and "all proceedings of the common council which take effect as an act or law of the corporation" have been held as not including resolutions of the common council appointing minor municipal officers.<sup>1</sup>

The phrase "every ordinance and resolution affecting the interests of the city" as found in the statutes of New Jersey excludes the by-laws of the council.<sup>2</sup>

The common law contains no rule making the approval of the Mayor necessary to valid municipal legislation, but when provided for by statute such approval is essential to the validity of an enactment and the statute receives a strict construction.

Where the concurrence of the Mayor as a part of the law making power is required, enactments which have not received such endorsements in some substantial manner are nullities without further action by the council.<sup>3</sup>

Unless the Mayor's approval is expressly required any provision for the attachment of his signature to an ordinance may be considered as merely directory and the absence of the signature will not affect the validity of the ordinance if it has been enacted otherwise in strict conformity to the charter requirements.<sup>4</sup>

Under a New Jersey Statute providing that every resolution of the city council shall be presented to the Mayor for his approval or veto, a formal and literal presentation must be shown, and the fact that the Mayor is informally cognizant of the passage of a resolution and makes no objection to it does not constitute a waiver of a literal presentation.<sup>5</sup>

<sup>1</sup>Achley's Case, 4 Abb. Pr. 35. <sup>2</sup>Pamphlet Laws 1886, page 361. <sup>3</sup>Irvin v Devors, 65 Mo. 625. City of Chariton v Holliday, 60 Iowa, 391. Whitney v City of Port Huron, 88 Mich. 268. <sup>4</sup>1 Cinn. Ohio 113; 52 Ind. 411; 6 Ohio, Cir. 362; 97 Pa. St. 538; 5 Ohio Cir. 196; 11 Ohio St. 96; 25 Wend 693; 1 Dutch N. J. 399; 47 N. W. R. 280; 30 N. J. L. 93; 40 Pa. St. 124; 136 Pa. St. 129; 61 Hun. 619; 88 Mich. 268; 38 Ohio St. 644. <sup>5</sup>State v City of Newark, 25 N. J. L. 399.

The delivery of the proceedings of the common council to the Mayor's clerk in his office is a sufficient delivery to the Mayor under a charter by which such proceedings are to be considered as approved by the Mayor unless returned within ten days without his endorsement.<sup>1</sup>

While his signature is the usual it is not the only valid expression of the Mayor's approval.

In Alabama where a statute required the Mayor's approval and signature, and his approval appeared on the record of the council proceedings in that he appeared as voting "yea" on the passage of a revised code containing old and new ordinances, and he had affixed his name to the statute it was held sufficient, as his approval and not his signature was the object sought and his affirmative vote testified to his approval.<sup>2</sup>

Still greater liberality was shown by the courts of Missouri in the admission of evidence to prove the actual approval of the Mayor.

The validity of an ordinance admitted to have been passed by the council of the city of St. Joseph being denied on the ground that the Mayor had never approved of it, and no copy with his signature attached being found among the city records, it was shown by the testimony of the Mayor that he had desired the passage of the ordinance and that his impression was that he had signed it.

The ordinance was recorded in a book kept for that purpose. The charter required this book to be kept but did not require the Mayor to sign the record. It was, however, the practice but not the uniform practice, to have it signed. The ordinance in question had been published in an official paper as passed by the council and approved by the Mayor and had also been acted upon by a railroad company. It was held that this was sufficient evidence of the approval of the ordinance by the Mayor.<sup>3</sup>

The signature of the Mayor attesting the minutes of

<sup>1</sup>Knell v City of Buffalo, 54 Hun. 80.

<sup>2</sup>Woodruff v Stewart, 63 Ala. 306.

<sup>3</sup>Knicht v Kansas City R. R. Co. 70 Mo. 231.

a meeting of the council in his capacity of presiding officer cannot be regarded as an expression of his approval of legislation effected at that meeting.<sup>1</sup>

Where action such as advertising has been taken by a municipal board prior to approval by the Mayor of the enabling legislation, such approval has been held to cure any irregularity in the proceedings.<sup>1</sup>

Under a city charter providing that if any bill shall not be returned by the Mayor within ten days after it shall have been presented to him for his signature, the same shall become a law in the same manner as if he had approved and signed it, if before the ten days expire and before he has signed it the council adjourns sine die the bill does not become a law for otherwise the council might nullify the charter.<sup>2</sup>

On the construction of the language of charter provisions it was decided with reference to the amended charter of the city of Brooklyn that a provision requiring the Mayor's approval of "every ordinance or resolution" is imperative and extends to all acts of the council whether legislative or otherwise.<sup>3</sup>

In Pennsylvania, where a charter gave the corporate council power to pass "by-laws, ordinances, resolutions and regulations," and required that "by-laws and ordinances" should be subject to the Mayor's approval, it was decided that the requirement extended to resolutions as well as to ordinances.<sup>4</sup>

The charter of the city of Cohoes, New York, provided that the bond of the Chamberlain, "shall be approved by the Mayor and Common Council," and elsewhere that "the Mayor and Aldermen of the city shall constitute the Common Council."

It was held that the bond must be approved by the Mayor independently of the Common Council and that

<sup>1</sup>*Lyth v City of Buffalo*, 48 Hun. 175. <sup>2</sup>*State v Carr*, 1 Mo. App. 490. <sup>3</sup>*People v Schroeder*, 76 N. Y. 160. <sup>4</sup>*Kempner v Commonwealth*, 40 Pa. St. 124.

the approval of the council did not include that of the Mayor although a part of such council.<sup>1</sup>

The endorsement of the actions of a city council involves in the highest degree the individual discretion of the chief executive and is not a duty that can be delegated.

So it was held in a case affecting the city of Buffalo where a resolution of the council approved by the confidential clerk in the absence of the Mayor was declared to be a nullity.<sup>2</sup>

Where a lease granted by a city provided for a forfeiture of the lease on account of non-payment of rent, to be made by an order or resolution entered on the record of the proceedings of the council, and the city charter required all resolutions and ordinances to be approved and signed by the Mayor before they should take effect, it was decided that the mere signature of the Mayor was not an approval of the resolution or order forfeiting the lease.

When a charter reads that, "every ordinance or resolution before it goes into effect should be presented to the Mayor," a resolution setting a time for a hearing of objections to a street improvement, is considered in New Jersey an intermediate proceeding not intended by the charter to be presented to the Mayor.<sup>3</sup>

The location or alteration of a street and the awarding of damages to parties injured thereby are not acts for the appropriation of money so as to require the approval of the Mayor.<sup>4</sup>

In Connecticut where a city charter provided that every resolution of the council should be sent to the Mayor, who shall either approve it, in which case he shall sign it, etc., or disapprove it, the Supreme Court decided that his approval was to be made known by a written declaration attested by his signature.<sup>5</sup>

<sup>1</sup>North v Cary, 4 Thomp. & C. 352.

<sup>2</sup>Knell v City of Buffalo, 54 Hun. 80

<sup>3</sup>State v Jersey City, 30 N. J. L. 93. <sup>4</sup>Preble v Portland, 45 Me. 241. <sup>5</sup>R. R. Co. v Waterbury, 55 Conn. 19.

7. *Mayor's Veto Power.*

A veto is a positive expression of a Mayor's disapproval of action by the municipal council. The veto power is not inherent in a municipal executive office and must be expressly conferred or necessarily implied from the city charter.<sup>1</sup>

At the present time some veto power is granted the Mayor by almost all charters, exceptions being found however in those of North Carolina and Tennessee.

Considerable difference appears in charter provisions relating to the character of the enactments upon which the power may be exercised, the time given to the Mayor for consideration and the subsequent vote in the council by which the veto may be overcome.

In all the larger cities and in many of the smaller ones the Mayor may veto separate items in appropriation bills.

The shortest time allowed a Mayor in which to consider legislation is given in Texas, where a Mayor has but three days in which to file his veto with reasons in the office of the clerk of the Council.<sup>2</sup>

The common period, such as is granted by the charters of Philadelphia, Baltimore and New Orleans is five days.

Ten days are allowed in Ohio<sup>3</sup> and New Jersey<sup>4</sup> and fourteen days in Iowa.<sup>5</sup> In the last named State if a Mayor refuses to sign council enactments he is required to call a special session at which he presents his veto with reasons.

A great variety is found in the number of votes necessary to overcome the Mayor's veto.

In Texas a bare majority vote suffices, but the usual provision is a two-thirds vote of all the members of the council whether that body consists of a single chamber or is bi-cameral.

<sup>1</sup>State v Carr, 67 Mo. 88.   <sup>2</sup>Law of 1875.   <sup>3</sup>Municipal Code, § 1666.   <sup>4</sup>Laws 1896, pg 861.   <sup>5</sup>Rev. St. pg. 180.

In the city of New York the board of Aldermen must reconsider their vote upon a bill vetoed by the Mayor within fifteen days and repass the measure by a two-thirds vote, or by one at least as large as the original vote.<sup>1</sup>

A three-fifths vote is necessary in Providence, Philadelphia and the very large proportion of three-fourths in Baltimore.<sup>2</sup>

The general rule is that if a Mayor fails to return a bill within the time specified it becomes law without further action by the council.

Under the section of the municipal code<sup>3</sup> of Ohio reading that "every ordinance, resolution or order in which an expenditure of money or the approval of a contract for the payment of money, or for granting a franchise, or creating a right, or for the purchase, sale lease or transfer of property, (except such as levying special taxes for the improvement of streets) shall before it takes effect be presented," etc., it has been held that ordinances which may result in the expenditure of money do not require the signature of the Mayor as the expenditure must be of necessity involved.<sup>4</sup>

The same case decided that an ordinance designating a route for a street railroad, and directing the clerk to advertise for bids for the construction and operation of the road was not within the section quoted.

A Mayor has power to veto the action of the Common Council in appointing officers to fill vacancies, though the power of the council to fill vacancies is not legislative but executive in its character.<sup>5</sup>

Where a statute vests in the Mayor a power of veto, he must be allowed full opportunity for the exercise of such power according to the provisions of the statute, and a council cannot defeat an expected veto by an adjournment before the expiration of the time allowed the Mayor for consideration.<sup>6</sup>

<sup>1</sup>Consolidation Act § 75.

<sup>2</sup>Public Local Laws, Art. 4, § 13.

<sup>3</sup>§ 1066.

<sup>4</sup>State v Henderson, 38 Ohio, St. 644.

<sup>5</sup>People v Fitch, 76 Hun. 80.

<sup>6</sup>State

v Carr, 67 Mo. 88.

The Common Council of the city of Rochester, New York, passed a resolution raising the salary of a Police Justice which resolution was presented to the Mayor on the 21st day of May.

The Mayor returned the resolution on the 27th day of May with an endorsement stating that he approved of the proceedings of the Common Council with the exception of that portion which increased the salary of the Police Justice to which he objected. On the first day of June he sent a message to the clerk giving his reasons for objecting to the increase of salary.

The Courts held that the failure of the Mayor to state his reasons for disapproving the resolution as required by the charter rendered his objection unavailing and that the resolution took effect at the expiration of five days from the time it was presented to him.<sup>1</sup>

Under an amendment to the charter of the city of Buffalo the boards of Aldermen and Councilmen were to meet in joint session for the purpose of fixing the salaries of police commissioners.

A resolution passed at such joint session was not subject to the usual veto power possessed by the Mayor over ordinances and resolutions passed by the common council.<sup>2</sup>

A statute requiring a Mayor to transmit with his veto his reasons for such action is imperative so that a veto unaccompanied by reasons is wholly inoperative.

When a city council has attempted to pass an ordinance over the Mayor's veto and has failed, its power is exhausted and a motion to pass the ordinance over the veto can not be re-considered.<sup>3</sup>

<sup>1</sup> *Treusdale v City of Rochester*, 33 Hun. 574.    <sup>2</sup> *People v Aldermen of Buffalo*, 47 State Rep. 149.    <sup>3</sup> *Sank v City of Phila.*, 8 Phila. 117.

## CHAPTER IV.

### EXECUTIVE POWERS AND MINISTERIAL DUTIES.

#### *1. Power to Appoint to Office.*

In the last chapter those powers and duties of a Mayor were considered which brought him in close relations with the municipal legislature. Now we are to consider the functions of a Mayor in a sphere where he is more independent and which is more exclusively his own. When there is more than a name to the office a Mayor is essentially an executive officer, and it is as the chief executive officer of a municipal corporation that he has gained and is likely to gain his most valuable powers.

In this capacity it is the duty of a Mayor in his application of laws, both State and municipal, to particular circumstances to serve the best interests of a community considered as a whole, and for this purpose to keep the machinery of municipal administration in the best possible condition. Of necessity he comes into direct personal contact with those other officers and agents of the corporation whose work is either mainly executive like his own, but in a limited sphere, or professional and highly technical or simply clerical. The more extensive his power of selecting the persons who shall be these officers the greater is his power to have the law faithfully executed and the greater is his own personal responsibility for the efficiency of the administration. The power to appoint to office is therefore beyond question the most important executive power both for the Mayor himself and for the whole community. To the extent that this power is controlled from the outside by individuals or organizations not responsible

to the corporation to that extent is the community defrauded of one of the most valuable elements of our political organization, namely the exercise of individual discretion. The people everywhere are now showing a disposition to increase this element by means of statutory law and demands for the application of business methods to municipal affairs. So at the present time very generally in the organization of our larger cities the appointment of the heads of the executive departments of a city government is vested in the Mayor subject to confirmation by the municipal legislature. The only general exception to this rule is to be found in the case of the officer having charge of municipal finances who is usually chosen by the whole body of electors, yet there are exceptions to this exception, for by the charters of Boston and Baltimore the Mayor appoints the Treasurer or Comptroller. This power of selecting the heads of departments is as yet far from being complete for very generally appointments by the Mayor to be valid must receive the approval of the city council or at least one of its branches. A tendency however, has been manifested in later charters to throw the entire responsibility of filling such an office as the head of an executive department upon the Mayor by not obliging him to have his appointments confirmed by the city council. This is true under the present charters of the cities of New York, Brooklyn and Philadelphia. For the city of New York the law of 1884<sup>1</sup> abolished confirmation by the board of Aldermen and the Mayor now appoints exclusively all heads of departments for terms of six years.

The present charter of the city of Brooklyn provides for the exercise by the Mayor of such a power without confirmation by the board of Aldermen. He appoints all the heads of the executive departments within one month of his taking office, for terms substantially the same as his

<sup>1</sup>Chapter 48.

own. By this arrangement each incoming Mayor has the various departments carried on for one month by the appointees of his predecessor and when he has had four weeks to familiarize himself with the details of the office he is given the chance to organize the city government, on its executive side in sympathy with himself. While the single heads of departments appointed by the Mayor hold office for a term the same as the Mayor's, the boards and commissions which he appoints have terms of a different length. So for example in respect to the board of education no one Mayor has the appointment of the whole board unless he serves for two consecutive terms.

It was the avowed intention of the framer of the "Bullett Law," the reform charter of Philadelphia, to concentrate the executive power as far as practicable in the hands of the Mayor by giving him the appointment of the heads of executive departments. This plan for the concentration of executive power was not carried out to the extent originally intended, in that the heads of several of the departments, the Receiver of taxes, the city Treasurer and the city Comptroller, are still elected by the people. Although the Mayor has been given a general supervision and control of these departments yet their heads are responsible to the people directly. In answer to criticism to the effect that this law placed too much power in the hands of the Mayor, Mr. Bullett the author and energetic supporter of the bill in every stage of its passage through the legislature, in a paper read before the Social Science Association in 1882 gave this defense: "There is a force in public opinion, which, when it is properly utilized, no man can resist. It is that which controls the actions of men in responsible public positions more than all things else. I care not how bold, how reckless, how independent a man may be, let him be placed in the chief executive office of a government where public sentiment can be concentrated upon him, and he can be held up to the censure and scorn of his fellow citizens if he departs from

the path of rectitude, and he will quail under its rebuke. No man who has ever yet attained high office in this country has had the hardihood to brave it. This responsibility to public sentiment and its recognized power should be at the foundation of all our governmental structures. The only departure from it is found in city governments."

In Boston the Mayor's complete power of appointment extends, as yet, only to the boards of Police and Street Commissioners and the messengers and clerks in attendance upon the city council. Under the municipal code of Ohio, Mayors appoint to office with the consent of a majority of all the councilmen, and may fill vacancies in elective offices until the next annual election.<sup>1</sup> By the charter of the city of St. Louis the Mayor makes appointments at the beginning of the third year of his four-year term of office. All such appointments require confirmation by a majority vote of the council and if such confirmation is refused the Mayor nominates again within ten days and continues to nominate until he succeeds in securing a confirmation. If he fails to nominate within ten days the council has the power of election.<sup>2</sup> In respect to the time of appointing the heads of executive departments this charter is to be contrasted with that of Brooklyn. By the political code of California the Mayor of San Francisco appoints all non-elective officers.<sup>3</sup>

The least development, among the larger cities of the Mayor's power of appointment is found in Providence, Rhode Island where the Mayor does not even nominate but simply has the casting vote on a motion to appoint as the presiding officer of an annual convention. In appointing to subordinate positions a Mayor is sometimes limited in his choice by statute provisions enacted without primary reference to administrative efficiency. So, where as in New York, a statute requires preference to be shown to honorably discharged soldiers and sailors, a Mayor can

<sup>1</sup> *State v Bryson*, 44 Ohio, St. 457.    <sup>2</sup> *Rev. St.* pg. 324.    <sup>3</sup> pg. 702.

not when appointing disregard the application of one having the requisite qualifications and a writ of mandamus will issue to compel him to show such a preference.<sup>1</sup>

The city council is usually but not always the body which confirms a Mayor's appointments. For example the appointment by the Mayor of the City of New York to the office of Commissioner of street cleaning requires the approval of the board of health.

Where a statute provides that in the appointment of city officers, "the Mayor shall have the exclusive power of nomination, subject however to confirmation or rejection by the board of Aldermen," a person nominated can be confirmed only by actually receiving the votes of a majority of the Aldermen voting upon the question. If a person nominated to office by a Mayor is not thus confirmed, the appointment is not legally made and the appointee may be ousted by quo warranto proceedings although the Mayor had announced, without objection by any of the Aldermen, that the nomination was confirmed and the Aldermen had approved the appointee's bond after he had taken the oath of office.<sup>2</sup> If a Mayor has the power to appoint by and with the consent of the council, and the council divides evenly upon a motion to approve and appoint, the Mayor may decide in favor of his nomination by casting his vote if he has one for the motion.<sup>3</sup> So in a Massachusetts city a Mayor after his nomination of one person had been rejected ten times, again nominated the same person and put the question in this form; "Shall the nomination be rejected?" and the vote being three in the affirmative and three in the negative declared the nomination not rejected, and the nominee appointed and as the courts held lawfully.<sup>4</sup>

An interesting case on a Mayor's power of appointment and suspension was decided in Ohio in 1886 on quo

<sup>1</sup> *People v Bardin*, 7 N. Y. Sup. Crt. 128. *People v Knapp*, 4 N. Y. Sup. Crt. 825. <sup>2</sup> *Commw. v Allen*, 128 Mass. 308. *State v Bryson*, 44 Ohio St. 457. *People v Weber*, 89 Ill. 347. <sup>3</sup> *Carrol v Wall*, 35 Kan. 38. <sup>4</sup> *Commw. v Allen*, 128 Mass. 308.

warranto proceedings from the city of Columbus. An ordinance of that city created the office of Fire Engineer to be filled annually by an appointment of the Mayor with the advice and consent of the city council. The Engineer was to hold office until his successor was appointed and qualified and vacancies in the office were to be filled immediately upon the vacancy occurring by appointment. It was the duty of the Mayor immediately upon making such an appointment to report the name of the appointee to the council. It was further provided that the appointee should qualify by taking an oath and giving a bond to be approved by the Mayor. The court found that the defendant had complied with all these conditions, but that such an ordinance gave no power to the Mayor, under such circumstances, to declare a vacancy, nor to suspend an incumbent, nor to appoint another in his place.<sup>1</sup>

A case originating in the city of Cohoes, New York, and carried for decision to the Court of Appeals showed the following facts :

The charter empowered the Mayor in case of a vacancy in the office of Chamberlain, to nominate and, upon confirmation by the Common Council, to appoint a person for a full term of three years and also to appoint in like manner, a person to act temporarily during the absence of the incumbent. The Chamberlain, eight months before the completion of his term became a defaulter, and left the city without an apparent intention of returning, whereupon the Mayor nominated a person to discharge the duties of the office during the Chamberlain's absence. It was contended on behalf of the person so appointed, that by the flight of the Chamberlain without intent to return the office became vacant under a provision of the statute vacating a city office when the incumbent ceased to be a resident of the city, and that therefore the Mayor had power only to fill the vacancy for the full term so that the appointment must be considered to have

<sup>1</sup> State v Bryson, 44 Ohio St. 457.

that effect. But the court held that the Mayor had not attempted to fill the vacancy, but only to make temporary appointment, and that the effect of the appointment could not be changed against his intention in making. If therefore he had no power to make the appointment which was in fact made, the result was a nullity.<sup>1</sup> On a question as to the appointment of Commissioners of Excise by the Mayor of the city of Lockport, New York, the Court of Appeals decided, on precedent, that such an appointment could not be made orally unless expressly permitted by the terms of the statute conferring the power of appointment, and that a commission was necessary, that is, a formal writing signed by the Mayor showing clearly his intention to appoint the person named, his belief that such writing is that required by the statute and his intention to make it the final act on his part to perfect the appointment.<sup>2</sup>

In another New York case a Mayor sent to the common council a written communication nominating three persons as Excise Commissioners, and the council by resolution confirmed the nomination. It was supposed that the appointment required such confirmation, but the Court of Appeals afterwards decided that the Mayor alone had the power of appointment. The Court held in this case that the Mayor's communication to the common council was a sufficient appointment and commission.<sup>3</sup> The general rule appears to be that while a formal and express commission is not essential to a valid appointment to municipal office, unless required by statute, some written evidence of such appointment is necessary. A written resolution of confirmation duly entered in the minutes of a city council renders an appointment complete although the Mayor refuses to attest the Journal.<sup>4</sup> A Mayor having duly made an appointment and filed some instrument in the office of the City Clerk such an appointment is beyond his power of recall.<sup>5</sup>

<sup>1</sup>*People v Hill*, 104 N. Y. 170. <sup>2</sup>*People v Murry*, 70 N. Y. 531 (reversing 8 Hun. 579). <sup>3</sup>*People v Fitzsimmons*, 68 N. Y. 514. <sup>4</sup>*People v Stowell*, 7 Abb. Pr. 456. <sup>5</sup>*Speed v Council of Detroit*, 56 N. W., Rep. 570.

*2. Power of Suspension.*

Almost equal in importance for the efficiency of municipal administration to the power of appointment is the power to remove from office. Provision is seldom made for the removal of higher municipal officials without some form of trial or at least a hearing. Pending the result of such proceedings an officer is usually suspended from duty and, as a rule, the power to order such a suspension is vested in the Mayor. By the charter in Brooklyn the Mayor has power to suspend any officer appointed by him, but he is required to serve with the order of suspension charges and specifications. On notice to the Mayor of from five to ten days a Special Term of the Supreme Court passes upon the sufficiency of the charges. Both the Mayor and the officer have the right to appeal to the General Term where a decision in favor of the Mayor operates as a removal.<sup>1</sup> The municipal code of Ohio provides that a Mayor may suspend any officer appointed by him and make an appointment to fill the vacancy, but requires that he report the suspension and appointment to the council whose vote of disapproval terminates the vacancy.<sup>2</sup> The weight of authority in American decisions sustains the doctrine that the power to suspend an officer does not follow from the grant of a power to remove him, but must be separately granted by the terms of the statute. So where a Kansas statute provided that the Mayor of a city should have a superintending control of all the officers and affairs of the city, and also should cause all subordinate officers to be dealt with promptly for any neglect or violation of duty, it was decided that the statute did not confer upon the Mayor the power to suspend a city engineer.<sup>3</sup> Where the power to appoint is vested exclusively in the Mayor and no confirmation by the Council is required, and especially where

<sup>1</sup> Laws 1888, Ch. 588.<sup>2</sup> § 1749.State *v* Hein Miller. 38 Ohio St. 101.<sup>3</sup> Meisner *v* Neally, 41 Kan. 122.Gregory *v* City of New York, 113 N. Y. 416.

there is no fixed term of office, the Mayor suspends and removes at pleasure. In such cases the discretion of the Mayor is absolute and he bears all the responsibility. But where a city council is vested with power to act judicially in reviewing the Mayor's action and after a hearing has declared the proof of charges insufficient to sustain an order of removal the Mayor cannot suspend the officer a second time for the same cause.

Where the charter of a city in Missouri provided that "the Mayor shall have power to nominate and with the consent of the Board of Aldermen to appoint all city officers," not ordered by this act to be otherwise appointed, also to suspend and with the consent of the Board of Aldermen to remove any city officer, except those elected by the people," the courts held that the city council might by ordinance confer upon the Mayor power to suspend any city officer though elected by the people.<sup>1</sup> The power to suspend from office like other disciplinary powers of administration must be expressly granted and can not be inferred from powers of regulation. So where the Mayor of the City of Cincinnati, Ohio, had power to make orders, rules and regulations for the government and discipline of the police force, he could not legally infer a power to suspend from office the Superintendent of Police.<sup>2</sup> Suspension is to be considered merely as the first step taken by a Mayor in proceedings for the removal of a subordinate officer.<sup>3</sup>

### 3. *Power of Removal.*

The development of the Mayor's power to remove subordinate officials from office has kept pace very generally throughout the United States with the increase in his power of appointment, and if harmony in municipal administration continues an object for legislation, this power will become more and more complete. The Mayors

<sup>1</sup> *State v Lingo*, 26 Mo. 496.    <sup>2</sup> *State v Hudson*, 44 Ohio St. 137.    <sup>3</sup> *People ex rel Hoffman v Board of Education*, 143 N. Y. 62.

of all the larger cities of the country have at this time some power of removal ranging from the mere right to initiate proceedings for removal before the municipal legislature up through the power to remove for cause and after hearing to the complete power to remove at pleasure. In order to carry out the plans of municipal reformation suggested by the "Second Committee of Seventy" and endorsed so heartily by the people of the city of New York, the legislature has vested in the Mayor of that city as complete a power of removal as is possessed by any Mayor in the United States. The text of the law is as follows:

SEC. 1. At any time within six months after the commencement of his term of office, the Mayor of the city of New York, elected for a full term, may, at pleasure, remove from office any public officer now or hereafter holding office by appointment from the Mayor of said city except judicial officers for whose removal other provision is made by the constitution.

SEC. 2. After the expiration of the said period of six months any such public officer may be removed from office in the manner heretofore provided by law.

SEC. 3. All acts or parts of acts inconsistent with this act, are hereby repealed.

SEC. 4. This act shall take effect immediately.

The Mayors of the cities of Boston and Philadelphia have for sometime possessed a complete power of removing all the officers whom they appoint, but are required to report the order of removal with charges or reasons to the city council. In Chicago though the Mayor's power of removal is large, it is not complete. He is required to report the reasons of his action to a meeting of the city council held between five and ten days after issue of the order and should he fail to file his statement with the City Clerk, or if the council by a vote of two-thirds of all the members disapprove of the removal, the officer is restored. In the Southern States the powers of appoint-

ment and removal are vested very generally in the city council, but recently the Mayor of Louisville, Kentucky has been given the power by written order with reasons to remove any head of department or other officer appointed by him if such order is not expressly disapproved by the board of Aldermen within thirty days.<sup>1</sup> If a power to remove special city officers is conferred jointly upon the Mayor and Common Council, it can not lawfully be exercised by the Council alone, and when such a power is conferred by a special charter, it is not repealed by a general statute conferring power to remove for another cause.<sup>2</sup> The power to remove "for cause" is to be strictly construed and its exercise must be restrained within the limits assigned to it by the enabling statute, it is judicial in its nature and when conferred upon a Mayor must be exercised reasonably and is always subject to judicial review.<sup>3</sup> So where a New York statute gave to a Mayor the power to remove certain officials for cause and after a hearing, subject, however, before such dismissal could take effect to the approval of the Governor expressed in writing, the courts decided that the proceedings of the Mayor in granting such an order of removal might be reviewed upon a writ of certiorari, although the Governor had not acted upon them, on the ground that the Mayor's order was the final judgment to be reviewed, though it remained in abeyance until it had received the Governor's approval, and finally that it was doubtful whether the courts had the power to review the action of the Governor after his approval.<sup>4</sup> Where a charter vests in the Mayor power to remove an appointed officer for cause yet provides no order of procedure to be followed the Mayor is clothed with all the judicial powers necessary to carry out his authority.<sup>5</sup> So when by the charter of the city of St. Louis an appointed officer was subject to removal for

<sup>1</sup>Laws of 1892.

<sup>2</sup>Charles v Hoboken, 27 N. J. L. 203.

<sup>3</sup>57 Hun. 587.

<sup>4</sup>People v Cooper, 57 How. Pr. Rep. 416.

<sup>5</sup>State v Walbridge, 24 S. W. Rep. 457.

cause by the Mayor and Common Council, it was decided that although the charter was silent as to the procedure to be adopted in such a case, yet a specification of charges, notice and an opportunity to be heard were essential as in any judicial proceeding.<sup>1</sup> Although a Mayor is one of a body charged with the duty of investigating an offense alleged to have been committed by an officer he may, nevertheless, formally bring the charges against him, but he must not, however, prejudge the cause nor act as prosecutor at the hearing.<sup>2</sup> On the other hand a power of removal at pleasure while it is discretionary is not judicial and a Mayor exercising it has the exclusive right to pronounce upon the propriety of using it. The charter of the city of Worcester, Massachusetts, provided that the Mayor and Aldermen should exercise exclusive power to appoint police officers, "the same to remove at pleasure," and that "the Mayor might remove, with the consent of the appointing power, any officer appointed upon his nomination." It was held that such charter provisions authorized the Mayor, with the consent of the Council mentioned, to remove police officers, including the appointees of a predecessor, without a hearing or even cause shown.<sup>3</sup> One section of a New York statute provided that the Mayor of a city should "from to time appoint and remove at pleasure" two persons to serve as Commissioners of Accounts, and another section provided that certain officers mentioned and all others whose appointment was in that section provided for should be nominated by the Mayor and appointed by him with the consent of the board of Aldermen and might be removed by the Mayor for cause and after opportunity to be heard. The Court of Appeals decided that a Commissioner of Accounts was not within the provision of the later section as he was not to be nominated by the Mayor, but appointed by him without the consent of the board of Aldermen and that, conse-

<sup>1</sup>State v St. Louis, 90 Mo. 19.    <sup>2</sup>Andrews v King, 77 Me. 224.    <sup>3</sup>Williams v Gloucester, 148 Mass. 266.

quently, he might be removed by the Mayor without notice or cause.<sup>1</sup>

#### 4. *Duties as to Licenses.*

The power conferred by State legislatures on municipal corporations to license certain trades, occupations and events is usually to be exercised by the city council in its discretion, when, therefore, under the provisions of any particular charter the Mayor is an integral part of the council, he, of course, shares in the exercise of this power, but a city council may not, even by a formal vote, delegate such power to be exercised by him alone as a co-ordinate branch of the municipal government. So in the State of Missouri within a year the right of a city council to delegate by ordinance to the Mayor the power to grant licenses to street venders has been denied.<sup>2</sup> But in a case arising in the city of Rochester, New York, it was decided that an ordinance prohibiting the peddling of certain articles without a license and authorizing the Mayor to grant licenses to "proper persons" on payment of a specified fee, is not objectionable in that it confers upon the Mayor the authority vested in the common council by the charter to regulate the vending of articles and to prescribe the fees to be paid for licenses.<sup>3</sup> In the city of New York the Mayor issues licenses to proprietors of places of public amusement, and of public exhibitions, to auctioneers keepers of immigrant boarding houses, immigrant transportation agents, "runners" for steamboats and to the owners of public grain-scales. The details connected with issuing these licenses are, of course, supervised by the Mayor's Marshal and as a rule the Mayor personally passes upon applications for licenses only when the character of a public entertainment, or exhibition is in question. Excellent work of this kind has been done in the past few years in cases involving the public perform-

<sup>1</sup>People v Mayor, etc., 82 N. Y. 491.

<sup>2</sup>Trenton v Clayton, 50 Mo. App. 535.

<sup>3</sup>Brady v City of Rochester, 54 Hun. 140.

ances of children. In Brooklyn the Mayor is empowered to issue many kinds of minor licenses and may suspend the licenses or warrants issued from his office reporting such suspension to the board of Aldermen for further action.<sup>1</sup>

The power to grant licenses for the sale of liquor within the city of Chicago is by statute vested in the city council, but it has been decided that the council may, and in practice the council does, grant such licenses by authorizing the Mayor to issue or cause to be issued the statutory license when the specified conditions are complied with.<sup>2</sup>

In the Southern States generally the licensing power is vested in the city council and the Mayor as the usual presiding officer of that body has a deciding vote on a motion to grant, but nothing more. It is then the usual duty of a Mayor to determine whether the conditions laid down as prerequisite to the issue of a license have been complied with and then to issue the license strictly according to the terms of the charter and ordinances.

An ordinance containing such an expression as, "which license shall be granted by the Mayor," makes the issue of a license to every applicant mandatory upon the Mayor.<sup>3</sup>

If, however, any discretion is lawfully vested in a Mayor he violates no rights in refusing an application even without specifying the motives of his action. It is not essential to the validity of a license that the signature of the Mayor be affixed with a pen, it may lawfully be made by stamping a fac simile of the written signature upon the face of the license if done by the Mayor himself, or by a clerk under his direction, or at his request.<sup>4</sup>

This is contrary to the general rule relating to enactments by a city council which requires a Mayor's own signature. Considerable discretion is, as a rule, vested in

<sup>1</sup>Laws, 1888 Ch. 582., Tit. 2, § 11.   <sup>2</sup>*Swarth v People*, 109 Ill. 621.   <sup>3</sup>*Commw. v Stokeley*, 12 Phila. 316.   <sup>4</sup>*Swarth v People*, 109 Ill. 621.

a Mayor to exercise a power of revoking licenses as a police power for the maintenance of good order, and this power may properly be delegated by a city council to the Mayor.<sup>1</sup>

So in Florida an ordinance was held to be valid which authorized the Mayor to revoke a license for the sale of liquors upon conviction of the licensee of keeping a disorderly house.<sup>2</sup>

When an applicant accepts a license issued pursuant to an ordinance giving the Mayor authority to revoke it for cause, and the license recites the Mayor's authority he will be estopped from saying that the Mayor had no such power or that the license can be revoked only by a judicial decision.<sup>3</sup>

#### *5. The Mayor's Signature.*

The most common ministerial duty to be performed by a Mayor is that of attesting public documents by attaching his signature, in some cases with the seal of the corporation. The papers which as a rule require for validity the signature of the Mayor are: the Journal of the city council, all council enactments, certificates of election to municipal office, commissions, licenses, warrants, drafts or other evidences of obligation, leases, deeds and all other instruments for the conveyance of real estate to which the corporation is a party, while the general rule is that a Mayor can not delegate this duty to a subordinate an exception is found in the city of New York where the Mayor may designate his chief clerk or the President of the board of Aldermen to countersign warrants. In Brooklyn the Mayor signs jointly with the Comptroller all warrants, bonds and other evidences of obligation, but may sign no bond for a loan without first indorsing the receipt of the Treasurer. All resolutions of the city

<sup>1</sup>Schwerchow v Chicago, 68 Ill. 444.    <sup>2</sup>Towns v Tallahassee, 11 Fla. 130.

<sup>3</sup>Wiggins v Chicago, 63 Ill. 373.

councils of Philadelphia in order to have the force of law must be both signed and published by the Mayor who also signs the usual documents.<sup>1</sup>

In San Francisco, as the presiding officer of the council the Mayor is required to sign the minutes of each meeting and to audit all claims against the city, a task usually placed upon the chief financial officer.<sup>2</sup>

A broad distinction has been recognized between the simple signature of a Mayor and his approval. His signature may be the means provided by statute to express his approval, when such approval is required, but if his signature alone is necessary the element of approval is absent. In respect to ordinances the general rule appears to be that unless the signature of the Mayor is made essential to the validity of the ordinance by the express terms of the statute the requirement is only directory and the absence of the Mayor's signature is not fatal to such legislation.<sup>3</sup>

So in Michigan where the charter of Bay City required all ordinances and the date of their publication to be recorded and the record to be signed by the Mayor, it was decided that such a record is not a condition precedent to the validity of an ordinance as an ordinance lawfully enacted cannot be defeated by the omission of administrative duty.<sup>4</sup>

And again, the signature of a Mayor has been declared non-essential to valid municipal legislation under the general incorporation law of the State of Indiana.<sup>5</sup>

Another rule as to the signing of ordinances is that where a statute directs a Mayor to sign only a certain class of ordinances or resolutions the law will receive a liberal construction by the courts to excuse any omissions.<sup>6</sup>

<sup>1</sup>Wain's Heirs v Phila., 39 Pa. St. 330. <sup>2</sup>Cal. Pol. Code, pg. 702. <sup>3</sup>Horr v Bemis, Mun. Police Ord §49. Stryker v Kelly, 7 Hill, N. Y. 9. Blanchard v Bissell, 11 Ohio, St. 96. Elmendorf v Mayo, 23 Wend 693. Martindale v Palmer, 52 Ind 411. Conboy v Iowa City 2 Iowa 90. <sup>4</sup>Stevenson v Bay City. 26 Mich. 44. <sup>5</sup>Martindale v Palmer, 53 Ind 411. <sup>6</sup>Piard v Jersey City, 30 N. J. L. 148.

Mere informalities in the signing of an ordinance by a Mayor will not be considered when all the substantial requirements have been observed in enacting it.<sup>1</sup>

So when "by mistake" the date of approval by a Mayor was entered as of a day prior to the passage of an ordinance levying a tax, it was decided in a suit to collect that as all other requisites had been complied with and as no one's rights had been prejudiced, the validity of the ordinance was not affected.<sup>2</sup>

Finally where a Mayor's signature to an ordinance can not be found because of accident or clerical carelessness extrinsic evidence is admissible to show that the Mayor has in fact signed it.<sup>3</sup>

#### *6. Miscellaneous Powers and Duties.*

The new constitution of the State of New York adopted at the election of November, 1894, vests a decidedly novel power in the Mayors of cities and especially those of the first class. Art. XII, Sec. 2 recognizes three classes among the cities of the State. The first class includes all cities having a population of two hundred and fifty thousand or more, the second class all cities with populations of fifty thousand and less than two hundred and fifty thousand; the third class all other cities. Special city laws are all those which relate to a single city or to less than all the cities of a class. After any bill for a special law has been passed by both branches of the legislature, the house in which it originated shall immediately transmit a certified copy to the Mayors of the cities affected and it becomes the duty of a Mayor within fifteen days to return the bill to the house from which it was sent, or if the session of the legislature at which such bill was passed has terminated, to the Governor with his certificate stating whether the city has or has not accepted

<sup>1</sup>Becker v Washington, 7 S. W. Rep. 291.  
113,   <sup>2</sup>Knight v R. R. Co., 70 Mo. 281.

<sup>3</sup>Allentown v Grim, 109 Pa. St.

the bill. In every city of the first class the Mayor alone and in every other city the Mayor and the municipal legislature concurrently act for the city and pass upon the bill. The legislature is empowered to provide for the concurrence of the municipal legislature in cities of the first class also. Where a bill affects more than one city it is not to be considered as accepted unless approved by the authorities of every city affected. Bills returned to the legislature without acceptance by the city or which are not returned within fifteen days may again be passed by both branches of the legislature and are subject as other bills to the action of the Governor. This power will be of great value not only to a municipality at large, but to a Mayor personally, enabling him to resist vicious partisan efforts to frustrate his plans and to discredit his administration. In Connecticut also a Mayor has direct relations with the State Legislature but only in the performance of a ministerial duty that of forwarding yearly to the General Assembly a detailed statement of the municipal indebtedness.

The charters of our larger cities as a rule provide that for the purpose of making effective his powers of supervision as the chief executive officer of the corporation that the Mayor shall call together the heads of the various executive departments for consultation. In some cities such conferences are periodic as for example is Boston and Philadelphia where the Mayor consults with the lesser executive officers at least once a month. In the city of New York all heads of departments and Commissioners appointed by the Mayor report to him every three months and also at other times and he may as occasion demands call together all heads of departments.<sup>1</sup>

At such consultations in Philadelphia it is the duty of the Mayor, assisted by the members of his cabinet, to work out systematic methods of ascertaining the comparative fitness of applicants for office.

<sup>1</sup> Consolidation Act §§ 49, 108.

Throughout the country city charters do not as a rule vest in the Mayor the power of directing in detail the action of the heads of departments and of having his policy extend to all cases, but where the Mayor exercises the absolute power of removal as is the case in the cities of New York, Boston and Philadelphia, he must of necessity practically possess such power. Everywhere Mayors are given as part of their power of supervision the power of inspecting either personally or by confidential agent the books of the various departments of the city government. So in Brooklyn the Mayor has power to inspect all accounts and to examine any subordinate officer under oath, and in Philadelphia the Mayor may appoint at any time and without notice three persons to audit the accounts of any departments. Large police powers are usually conferred upon Mayors though very seldom, especially in the larger northern cities, exercised by those officers. In order that peace and good order may prevail throughout the city a Mayor is commonly vested with all the powers of a sheriff of the county. A Mayor is expected to take command of the police in times of disorder and may make a direct call for the services of the militia and it is generally considered that the requisition of a Mayor on the militia is conclusive that their services are necessary. The direct control of the Mayor over the management of the police force of a city is being developed in several parts of the country with excellent results. In Minneapolis the Mayor now has concurrent powers with the Chief of Police in the management of the police department, and in New Orleans the Mayor is authorized to draft regulations for the police force subject, however to repeal by a two-thirds vote of the council.

A considerable and often unappreciated portion of a Mayor's official time is consumed in attending the regular and special meetings of the various boards and commissions of which he is by virtue of his office a member and usually the presiding officer. In New York city the

Mayor is an active member of the board of commissioners of emmigration, of quarantine, to select deposit banks, of the sinking fund, of estimate and apportionment, for the lighting of streets, for street opening and for stationery and printing. In Brooklyn the Mayor is ex-officio a member of the boards of Supervisors of King's county, and in Philadelphia he is a member of all boards except that of building inspectors and has the right to take part in the proceedings and vote. By the provisions of the Ohio code a Mayor is a member of the board of revision whose duty it is to hold monthly meetings, examine the city book-keepers under oath and to prescribe systems and forms for city accounts.<sup>1</sup>

The Mayor is also a member of the board of tax commissioners and in the city of Cleveland of the "depository committee." Generally a Mayor is a member of any special committee to negotiate loans.

On the question whether the Mayor of a city has any implied authority to employ counsel on behalf of the corporation the decisions are not entirely harmonious. But the general rule appears to be that which prevails in Massachusetts where a Mayor has no such authority unless expressly conferred upon him by charter or ordinance.<sup>2</sup>

But in Kentucky while the courts recognize this general rule that the Mayor of a city has no authority by virtue of his office to authorize litigation in behalf of the city, or to employ counsel to represent it, cases have arisen where the courts have decided that such power must necessarily exist. In Louisville the city officials were proceeding to collect a tax without an ordinance of the city council. The council failing to take any action the city attorney was not disposed to do so, but being in doubt as to the validity of the tax, advised action of some sort by the Mayor who employed counsel to institute a

<sup>1</sup>§ 17 20.

<sup>2</sup>Fletcher v Lowell, 15 Gray, Mass. 103

suit to restrain the collection of the tax. It was held that the condition of affairs justified the action of the Mayor.<sup>1</sup>

The Mayor of a city cannot, unless specially authorized, compromise any claim held by the corporation nor, by acting under such a compromise estop the assertion of the corporation's legal rights.

To illustrate the usual methods of conducting business at a Mayor's office those in vogue at the office of the Mayor of the city of New York may be cited. The office is open for the transaction of public business between the hours of nine and five of each week day exclusive of public holidays. The Mayor's clerical staff consists of two confidential clerks, a warrant and bond clerk, an assistant warrant clerk, two stenographers and a messenger. The Mayor's Marshal office has a separate clerical force. The reports of the heads of departments are received both quarterly and annually. When appointments to office are made the appointee after being officially notified comes to the office, takes the statutory oath and signs his name in an appointment book. All licenses are prepared in the marshal's office and are signed by the Mayor. The only public books that are kept are the appointment book and two license record books. Though the Mayor is a magistrate and also possesses all the powers conferred upon the superintendent and captains of police yet he seldom, at the present time acts as a judicial officer and there is no provision in his office for the holding of a court. The commissioners of accounts are the personal and confidential agents of the Mayor and report very frequently but not always in writing. The office is used by all departments of the city government as a sort of clearing house for complaints both from public and private sources and the volume of this particular business is surprisingly large.

#### 7. *Judicial Control by Writ of Mandamus.*

The Mayor of a city like any other public officer may

<sup>1</sup>City of Louisville v Murphy, 86 Ky, 53.

be compelled to perform the duties attached by law to his office. A customary method of compelling action by a Mayor is the issuing of a writ of mandamus by a court of competent jurisdiction. The office of the writ of mandamus when issued to the Mayor of a city is to compel him to perform some official act or duty incumbent upon him which is imperative in its nature and to the performance of which the relator has a clear legal right.<sup>1</sup>

So the writ has been issued to a Mayor compelling him to sign an order for the payment of a claim against the corporation,<sup>2</sup> to sign a contract properly drawn according to the charter and ordinances of the city,<sup>3</sup> to countersign a warrant of the City Comptroller for the payment of money as ordered by a board of Supervisors, to issue and sell municipal bonds, and to pay in court, the adjudicated value of lands condemned for wharf purposes. A provision of the charter of the city of Albany, New York, relating to the removal of buildings projecting into streets made it the duty of the city engineer on his own motion to institute proceedings for such removals. An amendment provided that the city engineer shall upon the receipt of written directions from the Mayor send written notice to the owner of such buildings. It was decided that the removal of such buildings is discretionary and that a writ of mandamus will not lie to compel him to initiate them. In the same case it was also decided that an action for a writ of mandamus to compel the performance by a Mayor of an official duty without regard to the name of the Mayor does not end by reason of a change of Mayor but continues to act upon the office and attaches to a new incumbent.<sup>4</sup>

<sup>1</sup>Dillon, *Mun. Corp.* 4th. ed. pg. 1006.

<sup>2</sup>*Duncan v Louisville*, 8 Bush, 98.

<sup>3</sup>*State v Ames*, 31 Minn. 440.

<sup>4</sup>*People v Mapes*, 141 N. Y. 380.

## CHAPTER V.

### JUDICIAL POWERS.

In the preceding chapters we have considered those powers pertaining to the office of Mayor which are exercised in the making of law and again in the execution of the will of the law making power. There now remains to be considered one other sphere of action namely, that of the judicial administration of the statutes of the commonwealth and the ordinances of the corporation. It has been repeatedly decided constitutional for legislatures to confer upon the Mayors of cities the powers and jurisdiction of Justices of the Peace.<sup>1</sup>

So in Iowa where the third article of the State constitution reads, "no person charged with the exercise of powers belonging to one department of the government shall exercise any of the functions appertaining to either of the other departments," the Supreme Court decided that the legislature had lawfully conferred upon the Mayor of the city of Keokuk the jurisdiction of a Justice of the Peace under the criminal laws of the State.<sup>2</sup>

But when the judicial powers of a State are in express terms of the constitution vested in district or parish courts, as in Louisiana, the legislature cannot constitutionally confer judicial powers upon the Mayor of a city, and to punish for violation of its ordinances a municipality in such a state must resort to the constitutional tribunals.<sup>3</sup>

A far more serious state of affairs for several city governments arose in Illinois. In that State a constitution

<sup>1</sup>State v Perkins, 24 N. J. L. 409. Bain v Mitchell, 87 Ala. 304. <sup>2</sup>Iowa, 165. <sup>3</sup>Lafon v Dufrocq, 9 La. Ann 350.

was adopted providing for the election of Justice of the Peace with terms of four years. Previous to the adoption of this constitution the legislature had granted to the cities of Springfield and Quincy charters providing for Mayors to be elected for terms of one year, who were to be commissioned as Justices of the Peace and to have exclusive jurisdiction in all cases arising under the ordinances of their corporations. It was decided that under the new constitution the Mayor of these cities and of all others where the terms of office were less than four years could not act as Justices of the Peace because they could not hold the office for the constitutional terms although several municipalities would be left without a tribunal for the enforcement of their ordinances.<sup>1</sup>

Judicial powers must be expressly vested in the Mayor by the organic law of the corporation, so if municipal charter provides that Justices of the Peace shall bear proceedings based on the ordinances of the corporation the city council cannot supplement the charter by giving a concurrent jurisdiction to the Mayor. These powers, therefore, are not to be considered as incidental to the office but as independent of it, for in this capacity a Mayor is clothed with a general power to administrate judicially the laws of the State.

Speaking broadly the exercise of judicial power by Mayors at the present time seems to be in inverse proportion, to the size of the municipality and the complexity of the municipal government. So Mayors are found to exercise judicial functions most actively in Delaware, Indiana and Iowa and generally throughout the Southern States. While as a rule the charters of the larger cities confer judicial powers on the Mayor, such powers, at the present time are seldom exercised in actual administration. In the city of New York the Mayor is a judicial magistrate by the provisions of the Consolidation Act<sup>2</sup> and of the

<sup>1</sup>State v Maynard, 14 Ill. 419. <sup>2</sup>§ 104.

Code of Criminal Procedure<sup>1</sup> but he rarely acts in such a capacity.

In Brooklyn the Mayor has the jurisdiction of a Justice of the Peace in criminal cases, but may not collect fees for services rendered in that capacity. He may issue a warrant of arrest for the violation of an ordinance and try such cases if the penalty does not exceed ten dollars, and if over that sum he may hold the parties to bail.<sup>2</sup> In Philadelphia the Mayor has the jurisdiction of a committing magistrate throughout the territory of the municipality, but he may, and in practice does, appoint an alderman to sit as a magistrate near his office. He is allowed to take proof of all instruments concerning reality located within the city and to receive fees for the same. In Baltimore the Mayor has the usual jurisdiction except for the recovery of debts.<sup>3</sup> By a general law in Virginia a Mayor has the jurisdiction of a justice throughout the city in civil matters and in criminal cases for one mile beyond.<sup>4</sup> In the State of Ohio the Mayors of cities have all the jurisdiction and powers of a Justice of the Peace in all civil cases and concurrent jurisdiction with Justices of the Peace in criminal proceedings throughout the county. Throughout the State of Indiana the Mayors of cities hold a court every week-day and exercise exclusive jurisdiction over prosecutors for the violation of ordinances, and as Justices of the Peace Mayors are required to give bonds in the sum of three thousand dollars. In Indiana a Mayor is more of a judicial officer than in the Southern States or in fact than in any other State of the Union. In several of the States of the middle west and south there still remain attached to the office of Mayor many of the functions of the old English Mayor and Justice of the Peace. In contrast with this development notice that the Mayor of Chicago has been declared to have no judicial powers<sup>5</sup> and that the charters of the cities of Louisville, St. Louis

<sup>1</sup>§147.    <sup>2</sup>Laws of 1888, Ch. 583 Ordinances §11.    <sup>3</sup>Public Local Laws, Art. IV, §7.    <sup>4</sup>Code of 1873, Ch. 54.    <sup>5</sup>State v Walters, 64 Ill. 226.

law of Texas a Mayor has all the criminal jurisdiction of and San Francisco make no mention of any distinctly judicial powers.

Under the code of the State of Iowa the jurisdiction of Mayors of cities and incorporated towns over persons guilty of violations of municipal ordinances is not exclusive and any Justice of the Peace within the county may issue a warrant and detain one under a charge in the custody of the municipal police until the day of trial.<sup>1</sup> And under the same code an appeal will lie from the judgment of a Mayor to the District Court for the violation of an ordinance<sup>2</sup> and a change of venue may be taken from the court of a Mayor to that of any other Justice of the Peace.<sup>3</sup> The Mayor of a city in Iowa who performs the duties of a Justice of the Peace in criminal actions prosecuted in the name of the State under the code, is not entitled to recover from the county the fees allowed to Justices.<sup>4</sup> In North Carolina a Justice of the Peace has final jurisdiction over "affrays." The Intendent of a city or town has the same criminal jurisdiction within the corporate limits as is given to Justices of the Peace and can therefore punish for disorder in the streets. An Alabama charter gave the Mayor "all the powers and jurisdiction of a Justice of the Peace in civil and criminal cases" and such a provision was held to confer by necessary implication, the power to issue an attachment returnable before the Mayor himself when the amount in controversy does not exceed one hundred dollars. Such an attachment may be directed by the Mayor to any constable of the county and may be executed by the sheriff.<sup>5</sup> In the same State where a statute provides for the election of Justices of the Peace with county districts a municipal charter giving the Mayor all the powers and jurisdiction of a Justice of the Peace "within the corporate limits," confers no jurisdiction of misdemeanors committed in the county.<sup>6</sup> By a general

<sup>1</sup>State v Hoag, 46 Iowa 337. <sup>2</sup>Jaquith v Royce, 42 Iowa 406. <sup>3</sup>French v Marvin, 46 Iowa 334. <sup>4</sup>Upton v County of Clinton, 52 Iowa 311. <sup>5</sup>Bain v Mitchell, 52, Ala. 304. <sup>6</sup>Murphy v State, 68, Ala. 81.

the Justice and is the chief judicial magistrate of a city if the city council does not provide for the office of Recorder. A Mayor has jurisdiction of civil actions arising outside of the city when the dependent resides in the city<sup>1</sup> and depositions may be taken out of the state in actions pending before a Mayor<sup>2</sup> and he cannot be held liable in damages for any judicial action.<sup>3</sup> The proceedings of a Mayor when acting under a State law as a Justice of the Peace need not be authenticated by the seal of the corporation.<sup>4</sup> A Mayor having the general powers of a Justice of the Peace may take an affidavit to be used in prosecuting an appeal from the judgment of a County Court.<sup>5</sup> A defendant cannot collaterally impeach the election of a municipal officer in order to question the authority of the Mayor who issued the warrant on which he was arrested, since an acting Mayor, whose judicial authority and official character are recognized by the court to which the record is certified and by the constable and people of the town, is at least a *de facto* officer and as such may lawfully take cognizance of any offense which is within jurisdiction.<sup>6</sup> When a special power is given to a Mayor to commit offenders against municipal ordinances in a summary manner and without trial by jury it must appear that he has strictly pursued such power. The record should show upon its face everything necessary to constitute a legal conviction and above all it should appear with precision of what offense the defendant was convicted.<sup>7</sup> As the cities of the country increase in size and elaborate police departments are organized and police or district courts are established the judicial powers of Mayors are likely to be more and more ignored and finally expressly withdrawn. Such changes would be in complete harmony with the general trend of legislation making the office of Mayor more and more an executive office.

<sup>1</sup>*R. R. Co. v Lash*, 108 Ind. 80. <sup>2</sup>*Reeves v Allen*, 42 Ind. 359. <sup>3</sup>*State v Wolner*, 127 Ind. 706. <sup>4</sup>*State v Walters*, 64 Ill. 235. <sup>5</sup>*Robinson v Benton County*, 49 Ark. 49. <sup>6</sup>*State v Davis*, 111 N. C. 729. <sup>7</sup>*Keeler v Milledge*, 24 N. J. L. 142.

*Educational Institutions Attended by the Author.*

Columbia College, 1887-1895.

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